

Fair Use Checklist

Use this checklist to determine whether your use of a copyrighted work might fall under the Copyright Act's Fair Use provision. This is provided as a general resource, not legal advice to answer specific questions.

1. Identify the title, author and copyright owner of the copyrighted work you wish to use:

2. Describe how you plan to use the copyrighted work:

3. Is the copyrighted work being used for purposes of criticism, comment, news reporting, teaching (including multiple print copies for classroom use), scholarship or research?

NO. If not, the use probably does not qualify for the Fair Use defense.

YES. If so, proceed to apply the four balancing factors below:

I. Purpose or character of use

Favoring fair use

The use is for a non-profit objective

The use is in the public interest

Proper attribution will be given to the author

My use will transform the nature of original work (e.g. it is a parody of the original work; it is a review of or commentary on the original work, etc.)

Distribution or access will be restricted to current students

The use will be only occasional, limited and sporadic

Use will be directly related to a favored objective, and the amount used will be tailored to that objective

Opposing fair use

Use is in connection with commercial activity

The use is primarily in furtherance of a private interest

No copyright notice or acknowledgement

My use will be a translation, revision or adaptation of the work; or is a derivative work based on the original

There will be broad distribution or access to my materials

The use will be repeated, systematic or ongoing

The use is only loosely related to a favored objective, or is broader than necessary to meet that objective

II. Nature of the work being used

Favoring Fair Use

The work being used has already been published

The work being used is a collection of facts, or is a non-fiction work

The work being used is not specifically sold or marketed for use in the educational market

Opposing fair use

The work being used has not been published

The work being used is fiction, or involves a high degree of creativity (e.g., music, choreography, fine artwork, film, photography)

The work being used is a consumable (i.e., intended for one-time or in-class use) such as a workbook or case study; or is specifically sold for use in the educational market

III. Amount and substantiality of the use

Favoring fair use

My use will involve limited excerpts, representing an insignificant portion of the whole copyrighted work

The portion of the work being used is not central or significant to the work as a whole

The amount of the work being used is appropriate for, and tailored to, the educational use or other public interest

The amount being used is within the parameters set forth in the Agreement for Guidelines on Classroom Copying; or the Guidelines for Educational Uses of Music

Opposing fair use

My intended use involves the entire work, or extensive excerpts

The portion of the work being used is the “heart of the work” or the most unique part of the work (even if limited in amount)

The intended use will take more of the copyrighted work than is reasonably necessary to achieve a favored purpose (see Point I above)

The amount being used exceeds the Agreement for Guidelines on Classroom Copying, or the Guidelines for Educational Uses of Music

IV. Effect on the market for the work being used*

**NOTE: Factor IV applies to both actual and potential markets for the copyrighted work. Recent court decisions have placed heavy emphasis on this factor.*

Favoring fair use

I will use a lawfully acquired copy of the copyrighted work

The nature of my work appeals to a different audience than the copyrighted work that I will be using

The copyright owner does not market or sell the work in a manner that is similar to my use of the work

The copyrighted work is out of print, or the copyright owner is unidentifiable

Only one or a few copies of the original copyrighted work were made, and these are not generally available

My use of this copyrighted work is sporadic or spontaneous, and there is no time to request permission

Only a limited number of copies of my work will be available and access restricted to a specific group of users

I will include a statement that the work being used is copyrighted and the copyright owner’s permission is required for further copying or distribution

Opposing fair use

I do not know whether the copy of the work that I am using was lawfully made or obtained

My use of the copyrighted material will provide an alternative to purchasing the original

The copyrighted work that I plan to use is sold or marketed primarily to non-profit, educational users

The copyright owner has requested a permission fee that is too high

Numerous copies of my work will be available, or it will be broadly available online

My use of this copyrighted work will continue beyond a single semester

My use of the copyrighted work will be freely available to others, either within my institution or to the general public

I have not provided copyright notice or other attribution of authorship

4. Conclusion

Is it reasonable to conclude that, in balance, the foregoing factors favor “Fair Use”?

YES. Maintain a copy of this worksheet for reference in the event of an infringement claim.

NO. Seek permission of the copyright owner.